

RETAIN FOR SUBSEQUENT CITY COUNCIL HEARING



**CITY OF EL PASO, TEXAS
DEPARTMENT OF PLANNING, RESEARCH & DEVELOPMENT
M E M O R A N D U M**

TO: The Honorable Mayor and City Council
Jim Martinez, Chief Administrative Officer
Patricia D. Adauto, Deputy Chief Administrative Officer
Laura Uribarri, Executive Assistant to the Mayor
Adrian Ocegueda, Executive Assistant to the Mayor

FROM: Raymond Bonilla, Plan Reviewer I

SUBJECT: City Council Agenda Item
Introduction: September 14, 2004
Public Hearing: September 28, 2004

DATE: September 8, 2004

The following item has been scheduled for City Council action as noted above. Should you have any questions, I may be contacted at 541-4720.

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO BARBARA
ETTINGER PERMITTING THE ENCROACHMENT OF A CANOPY
ALONG A PORTION OF PUBLIC RIGHT-OF-WAY AT 300 SOUTH EL
PASO STREET #D.**

(SP-04012 Fee: \$100.00, District 8)

Office Use Only

Mayor's Office: (5 copy)	date: _____	time: _____	by: _____
Representative District 1:	date: _____	time: _____	by: _____
Representative District 2:	date: _____	time: _____	by: _____
Representative District 3:	date: _____	time: _____	by: _____
Representative District 4:	date: _____	time: _____	by: _____
Representative District 5:	date: _____	time: _____	by: _____
Representative District 6:	date: _____	time: _____	by: _____
Representative District 7:	date: _____	time: _____	by: _____
Representative District 8:	date: _____	time: _____	by: _____

This Special Privilege authorizes the encroachment onto portion of public right-of-way with a canopy with no signage at 300 South El Paso Street. This request will permit the installation and maintenance of a canopy that will in its entirety encroach no more than Thirty Two feet wide by six feet deep (32'x6').

Requirements of the Special Privilege License include:

- A permit for the installation must be obtained by the applicant from the Building Permits and Inspections Department prior to installation;
- Approval from TXDOT for the encroachment on state right-of-way (approval has been granted);
- A term of 5 years, with the City having the option to renew for an additional 5 years;
- Annual consideration of \$20.00 with an advance payment of \$100.00 for the 5 year term;
- Providing liability insurance.

c: R. Alan Shubert, Director of Building Permits and Inspections
Terry Cullen-Garney, First Asst. City Attorney
Matt Watson, Asst. City Attorney
Lisa A. Elizondo, City Attorney

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO BARBARA ETTINGER PERMITTING THE ENCROACHMENT OF A CANOPY ALONG A PORTION OF PUBLIC RIGHT-OF-WAY AT 300 SOUTH EL PASO STREET #D.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to Barbara Ettinger, owner of the property located at 300 South El Paso Street :

1. The Special Privilege shall be in a form attached herein and incorporated as Exhibit "A";

2. The Special Privilege is to permit, Barbara Ettinger, owner of the property described as, *Block 34, Mills Addition, City and County of El Paso, Texas*, more commonly known as 300 South El Paso Street #D, to encroach onto a portion of City right-of-way with a metal canopy containing no signage, as more particularly shown in the attached and incorporated Exhibit "B";

3. As consideration for this Special Privilege, Barbara Ettinger shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A", subject to the terms and conditions of this ordinance and Special Privilege; and

4. This Special Privilege shall last a term of five (5) years.

PASSED AND APPROVED this 28th day of September, 2004.

THE CITY OF EL PASO

ATTEST:

Richarda Duffy Momsen
City Clerk

Joe Wardy, Mayor

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:



Matt Watson, Assistant City Attorney



R. Alan Subert, Building Permits & Inspections Director

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

EXHIBIT "A"
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE is made and entered into this **28th** day of **September, 2004**, by and between the **CITY OF EL PASO**, hereinafter "City", and **BARBARA ETTINGER**, Owner, hereinafter "Grantee", of property described *Block 34, Mills Addition, City and County of El Paso, Texas*.

WITNESSETH:

WHEREAS, Grantees are requesting the use of a portion of City right-of-way located at 300 South El Paso Street #D, in the City of El Paso, El Paso County, Texas; and

WHEREAS, the Grantees have requested permission from the City to install a canopy containing no signage that will, in its entirety, encroach no more than thirty two feet wide, by six feet deep (32' x 6') onto a portion of public right-of-way at 300 South El Paso Street #D; and

WHEREAS, City Council finds that the grant of this Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION.** The City hereby grants a Special Privilege to Grantees to encroach onto a portion of public right-of-way at 300 South El Paso Street #D in El Paso, El Paso County, Texas as shown in Exhibit "B" which is attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "Premises".

2. **TERM.** The term of this Special Privilege shall be for five (5) years from the date of execution of this Special Privilege. The City shall have the sole option to renew this Special Privilege upon the request of the Grantees for additional five (5) year options. If Grantee wants the City to renew this Special Privilege for an additional five (5) year term, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. This Special Privilege

shall expire without notice at the end of the expiration period unless a request for renewal is submitted in writing to the City by Grantee as herein required. Should Grantee fail to submit such request for the renewal of this Special Privilege to the City as herein required, this Special Privilege shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege.

3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City, pursuant to the fee structures set forth in Ordinance 10363, as amended and codified as Section 15.08.120.D., Twenty and No/100ths Dollars (\$20.00) per year, for a total sum of One Hundred and No/100ths Dollars (\$100.00), all of which shall be due prior to execution of this Special Privilege by City Council. The advance payment shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the City Comptroller. If the Special Privilege is disapproved by the City Council, the Office of the City Comptroller shall make full refund of the advance payment within fifteen (15) days of the denial action.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Ordinance 10363, Section 15.08.120.D. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which may result from a re-computation or assessment of fees pursuant to enactment of future amendments to Ordinance 10363. This Special Privilege is granted on the condition that Grantee pays for all costs associated with the canopy, as well as all costs for the restoration of the Premises.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment onto public right-of-way with a canopy containing no signage and measuring thirty-two feet wide by six feet deep (32' x 6'), onto the Premises, hereinafter called "Structure". Grantee shall not commence construction under this Special Privilege until the Building Permits and Inspections Department has approved all plans for the construction of the Structure as appropriate under applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to

waive any City permit requirements. Grantees shall be responsible for all maintenance of the Structure.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantees, nor shall it give rise to any vested right in the Grantees, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege, should the City do so for whatever reason.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair of the Structure.

5. **IMPROPER USE.** This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way, which may impair its function as a right-of-way. Grantee shall not construct any additional improvements, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the City Council.

6. **REPAIRS.** Grantee shall keep the property, Structure, and Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Structure and the Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. **INDEMNITY.** As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantees use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. **LIABILITY INSURANCE.** Grantees shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100ths Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100ths Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100ths Dollars (\$100,000.00) for property damage growing out of any one accident or other

cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, her officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured to the full amount of the policy limits.

No special privilege license shall be granted by City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Building Permits & Inspections Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

9. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which the Structure is encroaching is needed for public use or otherwise wish to cancel for any reason, the City may, upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of the Grantees in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason upon thirty (30) days prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee shall cease to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of her obligations under this Special Privilege and fails to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of Grantee obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, the encroaching Structure shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

10. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantees use of the Premises.

11. ASSIGNMENT. Grantee shall not assign this Special Privilege without the prior written consent of the El Paso City Council.

12. MISCELLANEOUS.

a. **SIGNS:** This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein. Permission to erect signage must be obtained by Grantee pursuant to applicable City Code and ordinance provisions and subject to the restrictions and requirements contained therein.

b. **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.

c. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantees construction and maintenance of the Structure, as well as Grantees use of the Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structure without first having obtained any required building permits from the Building Permits and Inspections Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

d. **SUCCESSORS AND ASSIGNS:** All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns. This Special Privilege is a

restriction, condition and covenant running with the property known as 300 South El Paso Street #D and a charge and servitude thereon, and shall bind the Grantee and her successors in title. Any further lease or conveyance of this property known as 300 South El Paso Street #D shall contain this restriction, condition and covenant and shall embody this Special Privilege by express reference.

e. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

with copy to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

and:

Sergio Gonzalez

or to such other address as the parties may designate to each other in writing from time to time.

f. ENTIRE AGREEMENT: This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

g. SEVERABILITY: Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.

h. LAW GOVERNING: The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

13. RESTRICTIONS AND RESERVATIONS. This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other

encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. EFFECTIVE DATE. This Special Privilege shall not take effect unless Grantee files her written acceptance with the Building Permits & Inspections Department prior to its passage and approval by the City Council. If Grantees accept the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantees are duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

WITNESS THE FOLLOWING SIGNATURES AND SEALS this 28th day of September, 2004.

THE CITY OF EL PASO

Joe Wardy, Mayor

ATTEST:

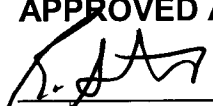
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson, Assistant City Attorney

APPROVED AS TO CONTENT:



R. Alan Shubert, Building Permits &

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this
08 day of September, 2004.

GRANTEE: BARBARA ETTINGER

By: Barbara Ettinger
BARBARA ETTINGER
(printed and name and title)

LEASESEE: SERGIO GONZALEZ

By: [Signature]
SERGIO GONZALEZ
(printed and name and title)

ACKNOWLEDGMENT

THE STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument is acknowledged before me on this 08th day of September,
2004, by BARBARA Ettinger as (Owner) and SERGIO GONZALEZ as
_____, as Grantee.

My Commission Expires: 02-15-08

[Signature]
Notary Public, State of Texas
Notary's Printed or Typed Name:

LUIS DORADO

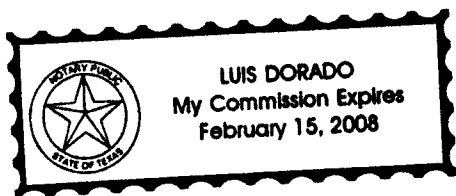
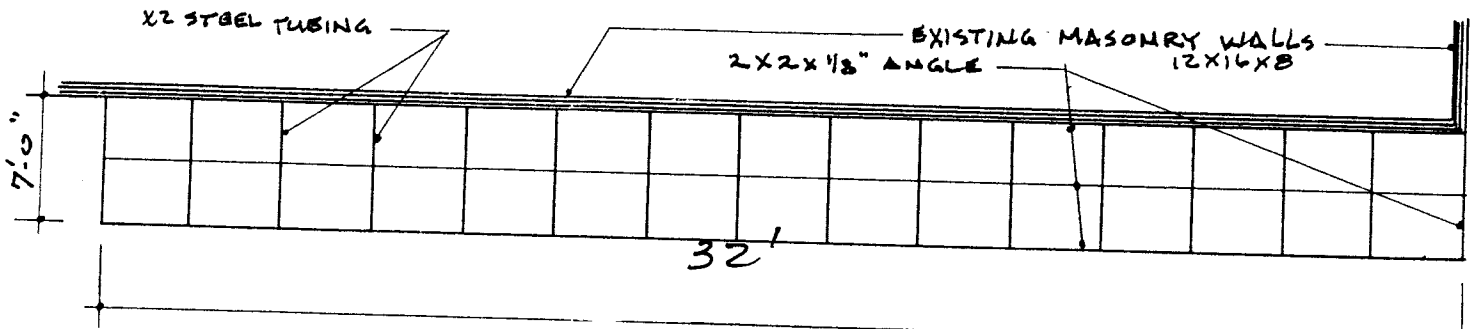


EXHIBIT "B"



PLAN VIEW - FRAMING PLAN

SCALE

3/32" = 1'-0"

